

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES L. GRIMES and	:	CIVIL ACTION
JANE GILLESPIE GRIMES,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
NORTHWEST AIRLINES, INC.,	:	
Defendant.	:	NO. 98-CV-4794

MEMORANDUM AND ORDER

J. M. KELLY, J.

JULY 30, 1999

Presently before the Court is Defendant Northwest Airlines, Incorporated's ("Northwest") Motion for Summary Judgment. Defendant believes summary judgment is appropriate because its liability is defined by the Warsaw Convention, which Defendant argues bars any recovery by Plaintiffs. The Court finds Defendant's position persuasive and, for the reasons that follow, will grant Defendant's motion.

I. FACTUAL BACKGROUND

Plaintiffs Charles and Jane Grimes, having arrived in Detroit from Vancouver, boarded a Northwest Airlines flight destined for Philadelphia. Mr. Grimes had requested an exit row seat, and took a seat he believed was assigned to him. Another passenger, Wendy Combs, also held a boarding pass for the same seat and, finding Mr. Grimes in her seat, sought the assistance of a Northwest employee. This employee, Mark Leone, inspected her pass and Mr. Grimes'. Combs apparently tired of this dispute and found another seat.

Neither Grimes nor Leone took this cue and an argument between the two developed. Grimes claims Leone persisted in maintaining Grimes was in the wrong seat and threatened to have Grimes removed from the plane. Grimes also alleges that Leone stepped on his foot and

“brushed against Mr. Grimes with his crotch.” (Pls.’ Mem. Resp. Def.’s Mot. Summ. J. at 4.)

This “was deliberate and it hurt Mr. Grimes.” Id. Leone was not the only aggressor, however; Grimes testified he insulted Leone and refused to leave the seat, announcing airport police would have to arrest him to get him off of the plane. (Grimes Dep. at 62-63, 66.)

The dispute between Grimes and Leone escalated. Airport police were called to the plane and the plane’s captain was called upon to arbitrate. The captain apparently was persuaded by Leone’s version of events and ordered Grimes off the plane. He refused to leave voluntarily, and was arrested by airport police for disorderly conduct. Handcuffed, Grimes was led off the plane by airport police. He claims he suffered injuries to his wrists, ankles, neck, right shoulder, and right arm as a result of his escort off of the plane. Mrs. Grimes claims emotional injuries.

II DISCUSSION

A. The Summary Judgment Standard

Summary judgment is appropriate if the record shows there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue of fact is genuine only if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party,” and a fact is material if it might affect the outcome of the suit under the applicable substantive law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). The nonmoving party is entitled to every favorable inference that can be drawn from the record. Sharrar v. Felsing, 128 F.3d 810, 817 (3d Cir. 1997). The nonmovant, however, may not avoid summary judgment by relying on evidence that is merely colorable or not significantly probative, Anderson, 477 U.S. at 249-50, and similarly may not rely on mere allegations, general denials, or vague statements, Quiroga v. Hasbro, Inc., 934 F.2d 497, 500 (3d Cir.), cert. denied,

502 U.S. 940 (1991). It is the movant’s initial burden to identify portions of the record demonstrating what it believes is an absence of genuine issues of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Where the burden of proof at trial is the non-movant’s, however, the movant can meet its obligation under Celotex by “pointing out to the district court that there is an absence of evidence to support the non-moving party’s case.” Id. at 325. Summary judgment is appropriate if the non-movant is unable to rebut the movant’s absence of evidence claim. Id. at 323.

B. The Warsaw Convention and Its Effect On Plaintiffs’ Claims

Defendant believes it is entitled to summary judgment because Plaintiffs’ claims are barred by the Warsaw Convention, which addresses airlines’ liability for injuries occurring during international travel.¹ Specifically, Defendant argues El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng, 119 S. Ct. 662 (1999), confirms that the Warsaw Convention provides the exclusive cause of action for injuries suffered during international flights, and Eastern Airlines, Inc. v. Floyd, 499 U.S. 530 (1990), prohibits Mrs. Grimes from recovering for her emotional injuries. With respect to Mr. Grimes, Defendant contends he was not injured as a result of an “accident” within the meaning of the Warsaw Convention, and even if an “accident” did occur, the record still supports summary judgment.

1. Plaintiffs’ Claims Under Article 25 of the Warsaw Convention

¹The Grimes’ trip qualifies as an international one even though their trip from Vancouver to Philadelphia was interrupted by a stay in Detroit. Convention for the Unification of Certain Rules Relating to International Transportation by Air [hereinafter “Warsaw Convention”], Oct. 12, 1929, art. 1(2), 49 Stat. 3000, T.S. No. 876 (1934), codified as amended at 49 U.S.C.A. § 40105 (1997).

Plaintiffs first argue the limitations the Supreme Court recently has visited on recovery under the Warsaw Convention all relate to Article 17, and have never been explicitly extended to Article 25.² The Court, however, does not find Article 25 is applicable here. Plaintiffs have failed to adduce any evidence that any Northwest employee acted with intent to injure Plaintiffs or acted recklessly and with knowledge that damage to Plaintiffs would result. See Piamba Cortes v. American Airlines, Inc., 177 F.3d 1272, 1290 (11th Cir. 1999) (arriving at this standard after an exhaustive review of other circuits' and countries' treatment of "willful"); see also Republic Nat'l Bank v. Eastern Airlines, 815 F.2d 232, 238-39 (2d Cir. 1987) (finding no genuine issue of material fact existed regarding willful misconduct); Onyebuchim Onyeausi v. Pan Am. World Airways, Inc., 767 F. Supp. 654, 657 (E.D. Pa. 1990) (same). The Court therefore will proceed to analyze Plaintiffs' claims under Article 17.

²Article 17 provides:

The carrier shall be liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Warsaw Convention art. 17.

Article 25 prevents air carriers from availing themselves of the Warsaw Convention's limitations on liability when the carrier or its employees injures a passenger through wilful misconduct.

(1) The carrier shall not be entitled to avail himself of the provisions of this convention which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as, in accordance with the law of the court to which the case is submitted, is considered to be equivalent to wilful misconduct.

(2) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused under the same circumstances by any agent of the carrier within the scope of his employment.

Id. art. 25.

2. Plaintiffs' Claims Under Article 17 of the Warsaw Convention

a. Mrs. Grimes' Claims

Mrs. Grimes claims she suffered emotional injuries as a result of the incident on the plane. The Court agrees with Defendant that she cannot recover for these injuries. The Warsaw Convention unequivocally is the exclusive remedy for injuries suffered during the course of international air travel, El Al Isreal, 119 S. Ct. at 667-68, and the Warsaw Convention does not permit recovery for purely mental or emotional injuries, Floyd, 499 U.S. at 552. Mrs. Grimes' claims are barred by the Warsaw Convention, and Defendant's motion is granted with respect to Mrs. Grimes' claims.

b. Mr. Grimes' Claims

Mr. Grimes claims he suffered a variety of physical injuries during his confrontation with Leone and his arrest by airport police. To determine whether Defendant is liable, the Court should consider where the accident occurred, the activity the injured person engaged in, and the control by the defendant of the injured person where and when the injury occurred. Evangelinos v. Trans World Airlines, Inc., 550 F.2d 152, 155 (3d Cir. 1977). Before the Court engages in this analysis, however, it must find an accident within the meaning of the Warsaw Convention occurred and, if so, that the accident happened while the passenger was on board the plane or while she was embarking or disembarking from the plane. Warsaw Convention art. 17.

An accident has occurred only "if a passenger's injury is caused by an unexpected or unusual event that is external to the passenger." Air France v. Saks, 470 U.S. 392, 405 (1985). The Court must apply this standard flexibly, considering all of the circumstances that surrounded the passenger's injuries. Id. The passenger is required to show only that one link in the chain of

events leading to his injury was unexpected or unusual to prove an accident has occurred. Id. at 406. This one link, however, must relate to the cause of the incident, not merely to the occurrence itself. Id. at 399. Where the Court is confronted with contradictory evidence, it should defer to the jury whether an “accident” occurred. Id.

Plaintiffs claim Mr. Grimes was injured twice: first by Leone, during the disagreement over whether Grimes occupied the correct seat; and second by the airport police, when he was removed from the plane. Neither set of alleged injuries was caused by an “accident” under the Warsaw Convention. An argument over seating is neither unexpected nor unusual, particularly in view of Grimes’ admissions that he refused to move to another seat, as Leone instructed, and that he responded to Leone’s instructions with unfavorable comments regarding Leone’s appearance.

Similarly, the injuries Grimes claims to have suffered when removed from the plane were not the result of an “accident.” Whatever injuries he suffered occurred because he was arrested, and he was arrested only because he refused to leave the plane voluntarily. He never would have been handcuffed and taken off the plane had he left when ordered by the plane’s captain. It does not matter if it was the captain’s decision that initiated the chain of events leading to his arrest; the fact remains it was entirely within Grimes’ control whether he was arrested. (See C. Grimes Dep. at 71.) Grimes’ decision interrupts the captain’s causal connection to the alleged injuries. Moreover, this causal chain must extend beyond when the arrest took place. Under Saks the Court is required to look at the circumstances surrounding the incident, and Grimes’ behavior and decisions plainly are among the factors the Court must consider. Grimes himself held the key as to whether he would be arrested. He declined to be compliant; he refused to leave

voluntarily. Having precipitated this result, neither the Warsaw Convention nor equity permit him to recover from Defendant. The Court will enter summary judgment in favor of Defendant.

An Order follows.

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CHARLES L. GRIMES and	:	CIVIL ACTION
JANE GILLESPIE GRIMES,	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
NORTHWEST AIRLINES, INC.,	:	
Defendant.	:	NO. 98-CV-4794

ORDER

AND NOW, this 30th day of July, 1999, upon consideration of Defendant Northwest Airlines, Incorporated's Motion for Summary Judgment (Document No. 21), Plaintiffs Charles L. Grimes and Jane Gillespie Grimes' response thereto, and Defendant's reply, it is hereby

ORDERED:

1. Defendant's Motion for Summary Judgment is **GRANTED**;
2. Judgment is entered in favor of Defendant Northwest Airlines, Incorporated and against Plaintiffs Charles L. Grimes and Jane Gillespie Grimes; and
3. The Clerk of Court is ordered to mark this matter closed.

BY THE COURT:

JAMES McGIRR KELLY, J.